IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1931 OF 2006

National Insurance Co.Ltd. ...Appellant

vs.

Sarubai Shivaji Rathod and ors. ...Respondents

Ms Arati Barve for the Appellant
Mr.S.S.Shah for Respondent Nos.1 to 7.
Mr.N.G.Ghotekar for Respondent No.11.

CORAM: A.S.OKA, J.
DATE : JANUARY 8,2007.

P.C.:

1. Heard Advocate for the Appellant. The learned Advocate for the Appellant stated that in terms of orders dated 14th August 2006 as well as 4th October 2006 she has repeatedly sought instructions from the concerned office of the Appellant for making necessary statement in terms of the order dated 14th August 2006. The learned Advocate for the Appellant states that no instructions has been given to her as of today. Thus, the order dated 14th August 2006 is not complied with.

2. In this case, it is apparent that the Appellant has not taken any defence under section 149 of the Motor Vehicles Act, 1988 before the Tribunal. There is no material placed on record till today to show that Application under section 170 of the said Act of 1988 was made by the Appellant before the Tribunal and the said Application was decided by the Tribunal.

3. In view of the decision of the Apex Court in case of National Insurance Company Ltd. Vs. Nicolletta Rohtagi [(2002) 7 S.C.C. page 456], Appeal is not maintainable. This is not a case where the defence covered by section 149 of the said Act of 1988 is raised by the Appellant before the Tribunal. Appeal is dismissed as not maintainable. The Appellant will be entitled to refund a sum of Rs.25,000/- deposited in this Court.

JUDGE